

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)

Lafarge North America, Inc.)

Roberta Plant)

Calera, Shelby County, Alabama)

Air Facility ID No. 411-0004)

CONSENT ORDER NO. XX-XXX-CAP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department”) and Lafarge North America, Inc. (hereinafter, the “Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee operates a limestone quarry and Portland cement manufacturing facility, known as the Roberta Plant, (hereinafter, the “Facility”) located in Calera, Shelby County, Alabama.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code §22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to

administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. The Permittee operates under the authority of Major Source Operating Permit No. 411-0004 (hereinafter, the “Permit”).

5. The Permit was initially issued by the Department to the Permittee on October 25, 2000, and modified on June 6, 2002. The most recent renewal Permit was issued on March 20, 2007, with a subsequent modification on November 28, 2007.

6. General Permit Proviso No. 21(b) of the Permit states:

Deviations from permit requirements shall be reported within 48 hours or 2 working days of such deviations, including those attributable to upset conditions as defined in the permit. The report will include the probable cause of said deviations, and any corrective actions or preventative measures that were taken.

7. Area 300 Recordkeeping and Reporting Proviso No. 2(d) of the Permit requires that the date and time identifying each period during which the opacity monitoring system was inoperative (except for zero and span checks) and the nature of the system repairs and adjustments be included in each quarterly excess emissions report.

8. On July 23, 2008, the Department received from the Permittee the Periodic Startup, Shutdown and Malfunction Report, Continuous Monitoring System Performance Report, and Excess Emissions Report (hereinafter, “MACT Report”) for the Main Kiln (23-BF-705) and the Coal Mill (25-BF-638).¹

9. The MACT Report indicated that the Main Kiln Continuous Opacity Monitoring System (hereinafter, the “COMS”) was inoperable for a total of 28,596 minutes during the reporting period between January 1, 2008, and June 30, 2008. The

¹ As required by the National Emission Standards for Hazardous Air Pollutants: General Provisions, 40 CFR §63.10(c), (d), and (e), Subpart A, and as required by the National Emission Standards for Hazardous Air Pollutants: Portland Cement Plants, 40 CFR §63.1354(b), Subpart LLL,.

reported COMS downtime constituted fifteen (15%) percent of the total source operating time. A subsequent records review conducted by the Department indicated that the Permittee did not notify the Department of the extended periods of COMS downtime, as required by General Permit Proviso No. 21(b) of the Permit.

10. A subsequent comparison of the 1st and 2nd Quarter 2008 Excess Emissions Reports (hereinafter, “1QTR08 EER” and “2QTR08 EER”), received on April 10, 2008, and July 7, 2008, respectively, indicated that each period of excessive downtime was not reported to the Department as required by Area 300 Recordkeeping and Reporting Proviso No. 2(d) of the Permit.

11. The 1QTR08 EER and 2QTR08 EER each stated that the COMS was inoperable in excess of ninety-nine percent of the total operating time.

12. The Department conducted additional follow-up interviews with Permittee personnel at the Facility, which revealed that the Permittee had not correctly reported COMS downtime in any quarterly reporting period prior to the 1QTR08 EER and 2QTR08 EER.

13. Further review of previously submitted Annual Compliance Certifications (hereinafter, “ACCs”) by the Department, indicated that the Permittee had erroneously certified compliance with Area 300 Recordkeeping and Reporting Proviso No. 2(d). Pursuant to this Permit Proviso, each ACC contains an affirmation of truth, accuracy and completeness signed by the Permittee.

14. On October 7, 2008, the Department issued a Notice of Violation (hereinafter, “NOV”) to the Permittee for violating General Proviso No. 21(b) and Area 300 Recordkeeping and Reporting Proviso No. 2(d) of the Permit.

15. On November 3, 2008, the Department received the Permittee's response to the NOV and it sought to explain the following:

(a) The omission of COMS downtime on quarterly excess emissions reports was as a result of using incorrect forms; and

(b) It did not intend to certify compliance with Area 300 Recordkeeping and Reporting Proviso No. 2(d) on previously submitted ACC reports.

16. On December 15, 2008, the Department received from the Permittee the ACC covering the reporting period between October 25, 2007, and October 24, 2008. The Department's review of the ACC noted that the Permittee neglected to reference the NOV issued to it on October 7, 2008. However, each violation resulting in the issuance of the NOV was correctly identified throughout the report.

17. On January 16, 2009, the Department issued a letter to the Permittee requesting additional information regarding the NOV, specifically the following:

(a) A description of any measures implemented during the COMS downtime in order to ensure that the opacity limit was not exceeded.

(b) An explanation why the Permittee certified compliance with Area 300 Recordkeeping and Reporting Proviso No. 2(d) while simultaneously maintaining that such information was not required to be reported to the Department.

18. On January 23, 2009, the Department requested that the Permittee revise and resubmit the ACC, along with the NOV, to the Department and the United States Environmental Protection Agency, Region IV.

19. On February 4, 2009, the Department received from the Permittee the revised ACC, as requested.

20. On February 17, 2009, the Permittee provided a written response to the Department's request for additional information. The response further explained the following:

(a) It's omission of COMS downtime on the quarterly excess emissions reports was as a result of using incorrect forms; and

(b) Opacity monitoring was not performed during the period when the COMS was inoperable.

21. The Permittee neither agrees nor disagrees with the Findings presented in this Consent Order, but in an effort to cooperate with the Department and to comply with the provisions of the Alabama Air Pollution Control Act. The Permittee consents to the terms of this Consent Order and to pay the civil penalty assessed herein.

22. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

CONTENTIONS

23. Pursuant to Ala. Code §22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature,

extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following.

A. SERIOUSNESS OF THE VIOLATION: Although visible emissions were not monitored during COMS unavailability, the Department is not aware of any irreparable harm to the environment resulting from the above-referenced violation. The Department considers the failure to report monitor inoperability and subsequent certification of compliance with applicable standards of the Permit to be serious.

B. THE STANDARD OF CARE: The Permittee did not exhibit a standard of care commensurate with applicable regulatory requirements. Specifically, the Permittee failed to comply with Permit conditions that require it to notify the Department of any periods in which the COMS was inoperable. Additionally, the Permittee did not conduct opacity monitoring in lieu of the COMS.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is not aware of any evidence that the Permittee derived any significant economic benefit from this violation.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Permittee has installed electrical surge protection systems on the COMS. Additionally, the Permittee has revised its

Standard Operating Procedures in order to ensure that the Department is notified of any COMS downtime as required by the Permit.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department issued a NOV to the Permittee on January 24, 2004, along with a subsequent Consent Order on September 13, 2004, for failure to report excess emissions as required by the Permit.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this ORDER with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$10,000 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within

forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. The Permittee agrees to comply with all requirements of ADEM Admin. Code div. 335-3 and the Permit immediately upon the effective date of this Order and continuing each and every day thereafter.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. The parties agree that, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

F. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee

also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations may

be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

I. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

J. The Department and the Permittee agree that this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and the Permittee agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

L. The Department and the Permittee agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

M. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

N. The Department and the Permittee agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an

existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

LAFARGE NORTH AMERICA, INC.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

(Signature of Authorized Representative)

Onis "Trey" Glenn, III
Director

(Printed Name)

(Printed Title)

Date Signed: _____

Date Executed: _____